IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2010

CORAM

THE HONOURABLE MR. JUSTICE. C.S.KARNAN

C.M.A.No.1583 of 2001

Tamil Nadu State Transport
Corporation (Villupuram Div.I) Ltd.,
rep.by its Managing Director
formerly known as Thanthai Periyar
Transport Corporation, Villupuram .. Appellant/Respondent
(C.T.accepted vide as per Order of
Court dated 29.10.2001,
in C.M.P.No.16011/2001)

Vs

Elavarasan .. Respondent/Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 24.11.2000, made in M.C.O.P.No.669 of 1995, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Villupuram.

For appellant : Mr.G.Muniratnam

For respondents : No appearance

J U D G M E N T

The above Civil Miscellaneous Appeal has been filed by the appellant/respondent, Tamil Nadu State Transport Corporation Ltd., against the Award and Decree, dated 24.11.2000, made in M.C.O.P.No.669 of 1995, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Villupuram, awarding a compensation of Rs.18,000/-, together with interest at the rate of 12% per annum from the date of filing the petition till the date of payment of compensation.

2.Aggrieved by the said Award and Decree, the appellant/respondent, Tamil Nadu State Transport Corporation Ltd., has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

3.The short facts of the case are as follows:

On 08.05.1995, the claimant/respondent was standing at the Adukkam bus stop at about 7.20 p.m. when the appellant/Tamil Nadu

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State Transport Corporation Bus came from Thiruvannamalai towards Villupuram and stopped at the Adukkam bus stop. At the time the claimant had attempted to board the bus, when suddenly the bus started, the claimant fell down. The front wheel of the bus ran over his right hand fingers and sustained injuries and all the fingers about four inches shortened due to the accident. For preliminary treatment, he was rushed to the Kandachipuram Hospital, subsequently, to Villupuram Hospital and thereafter to Jipmer Hospital at Pondicherry. In all the three hospitals he received treatment. At the time of accident, the claimant was an Electronic Mechanic in T.V., Radio etc., After the said accident, he is unable to do his job due to the loss of his fingers and hence unable to perform his job as normal. Therefore, the claimant claimed the compensation of Rs.1,75,000/-.

4.The respondent in his Counter has resisted the claim stating that the Tamil Nadu State Transport Corporation Bus was not involved in the said accident. As such, the claim petition is not maintainable. Further, the appellant denied that the driver of the bus had not driven the bus in a rash and negligent manner at high speed. The claim amount is an excessive, no document proof of the income and age of the claimant. Hence, the appellant/respondent prayed to dismiss the claim petition.

5.The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Did the accident happen due to the rash and negligent driving of the respondent's bus?

(ii) What is the quantum of compensation, the claimant is entitled for?

6.On the petitioner's side, the petitioner was examined as PW1 and Dr.Shanmugasundaram was examined as PW2. The claimant filed eight documents as Exs.P1 to P8 namely Ex.P1, the FIR; Ex.P2, the Motor Vehicle Inspector's Report; Ex.P3, the Charge Sheet; Ex.P4, the Wound Certificate of the claimant; Ex.P5, the Certificate issued by Industrial and Commerce Department; Ex.P6, the Medical Bills (29 serials); Ex.P7, the Disability Certificate of the claimant and Ex.P8, the X'ray. On the side of the respondent no witnesses were examined and no documents were marked.

7.The petitioner was examined as PW1 and he adhered evidence stating that the accident happened due to the rash and negligent driving of the respondent's bus. Supporting to his evidence Ex.P1, the FIR; Ex.P2, the Motor Vehicle Inspector's Report and Ex.P3, the Charge Sheet. The said Exs.P1 and P3 registered against the driver of the respondent's bus. The petitioner further stated that immediately after the accident, he was admitted in the hospital. After about ten days he was discharged from the hospital and gave complaint to the Investigating Officer. On the side of the respondent, no one was appeared and no oral and documentary evidence

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was produced. On the basis of the petitioner's evidence and Ex.P3, the FIR, which was registered against the driver of the respondent's bus. The Tribunal had come to the conclusion stating that the said accident had happened due to rash and negligent driving of the driver of the respondent' bus. As such, the negligence is fixed on the part of the respondent and the Issue No.1 was answered in favour of the petitioner.

8.The petitioner further stated in his evidence that he had sustained three grievous injuries. Supporting this point, the petitioner marked Ex.P4, the Wound Certificate issued by the Jipmer Hospital, Pondicherry. One Dr.Shanmugasundaram had adhered evidence before the Tribunal and he cited that the petitioner's right middle finger and that the ring finger sustained fracture and part of the bone. As such, the petitioner sustained 40% disability. Further, he has marked the Ex.P7, the Disability Certificate and Ex.P5, the X'ray.

9.On the basis of the petitioner's evidence and Doctor's evidence regarding mode of the accident and the nature of injuries, the Tribunal had awarded a compensation of Rs.18,000/- together with interest at the rate of 12% per annum from the date of filing the petition till the date of payment of compensation. Further, the Tribunal ordered that after the deposit of the compensation amount, the petitioner is permitted to withdraw 50% of the compensation amount and the balance 50% amount to be deposited in a nationalised bank for a period of three years. The Tribunal fixed a sum of Rs.1,000/- as Advocate fees.

10.Challenging the Award and Decree, dated 24.11.2000, in M.C.O.P.No.669 of 1995, passed by the Motor Accident Claims Tribunal, Principal Sub Court, Villupuram, the above Civil Miscellaneous Appeal has been filed the appellant/Tamil Nadu State Transport Corporation Ltd.,

11.The learned counsel appearing for the appellant argued that the Corporation bus was not involved in the said accident. The petitioner's evidence is of interest evidence. No police officer was examined to determine the negligence of the driver. The Tribunal erroneously has come to the conclusion that negligence is on the part of the respondent bus. The Tribunal, on the basis of the petitioner's evidence and without material evidence regarding injuries, treatment, medical expenses, disability, occupation and income, the Tribunal, which awarded the compensation is erroneous. The PW2, Dr.Shanmugasundaram, who had not related to the claimant. As such, the Doctor's evidence is to be rejected. So, the learned counsel appearing for the appellant prays to set aside the award.

12.After considering the facts and circumstances of the case and arguments advanced by the learned counsel appearing for the appellant, this Court is of the view on considering the nature of the injuries, Wound Certificate and the Disability Certificate, the

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quantum of compensation ie. a sum of Rs.18,000/- together with interest at the rate of 12% per annum from the date of filing the petition till the date of payment awarded in M.C.O.P.No.669 of 1995, dated 24.11.2000, is fair and equitable. As such, this Court confirms the same.

13.This Court imposed a condition on the appellant on 24.11.2000, to deposit the entire compensation amount, into the credit of the M.C.O.P.No.669 of 1995, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Villupuram. As the accident happened in the year 1995, it is open to the respondent/claimant to withdraw the entire compensation amount with accrued interest and cost, lying in the credit of the Award and Decree, dated 24.11.2000, made in M.C.O.P.No.669 of 1995, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Villupuram, after filing necessary payment out application in accordance with the law, subject to withdrawal, if any.

14.In the result, the Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 24.11.2000, made in M.C.O.P.No.669 of 1995, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Villupuram, is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

krk

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1. The Motor Accident Claims Tribunal,
   Principal Sub Court, Villupuram.

2. The Section Officer,
   VR Section, High Court, Madras.

+ 1 cc to Mr. G. Muniratnam, Advocate SR No.6211

RSM(CO)
SR/19.2.2010

Order in
C.M.A.No.1583 of 2001

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